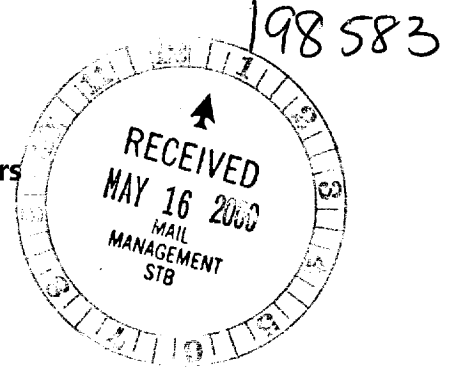




Canadian  
Pulp and Paper  
Association

L'Association  
canadienne  
des pâtes et papiers



May 15, 2000

SURFACE TRANSPORTATION BOARD  
Office of the Secretary  
Case Control Unit  
Attention: STB Ex Parte No. 582 (Sub-No. 1)  
1925 K Street N.W.  
Washington, DC  
20423-0001

**ENTERED**  
**Office of the Secretary**

**MAY 16 2000**

**Part of  
Public Record**

**Re: Major Rail Consolidation Procedures - S.T.B.  
Ex Parte No. 582 – (Sub-No. 1) - Service Date March 31, 2000  
Canadian Pulp and Paper Association**

Dear Sirs:

Pursuant to the above referenced Decision of the Surface Transportation Board, the Canadian Pulp and Paper Association hereby encloses an original and 25 copies of the Submission of the Canadian Pulp and Paper Association.

Yours truly,

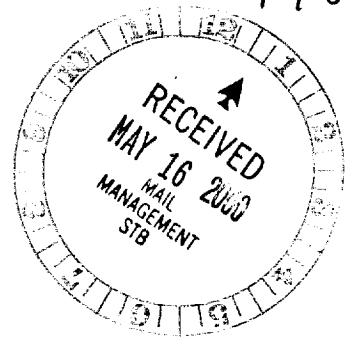
David W. Church  
Director - Transportation,  
Recycling and Purchasing

1155 Metcalfe Street  
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**ENTERED**  
**Office of the Secretary**

**MAY 16 2000**

**Part of**  
**Public Record**

**BEFORE THE SURFACE TRANSPORTATION BOARD**

**STB Ex Parte No. 582 (Sub-No.1)**

**MAJOR RAIL CONSOLIDATION PROCEDURES**

**SUBMISSION OF THE**  
**CANADIAN PULP AND PAPER ASSOCIATION (CPPA)**

1155 rue Metcalfe  
Montreal, Quebec  
H3B 4T6

**BEFORE THE SURFACE TRANSPORTATION BOARD**

**STB Ex Parte No. 582 (Sub-No.1)**

**MAJOR RAIL CONSOLIDATION PROCEDURES**

**SUBMISSION OF THE CANADIAN PULP AND PAPER ASSOCIATION**

**As to Regulations at 49 CFR Part 1180 Subpart A (49 CFR 1180.0 - 1180.9)**

**INTRODUCTION**

This submission is made on behalf of the members of the Canadian Pulp and Paper Association (CPPA). Founded in 1913, CPPA is a national association representing companies that produce most of the pulp, paper and paperboard manufactured in Canada.

The forest products industry is one of Canada's most important industries. It is the largest single contributor to Canada's balance of trade by a wide margin; it generates annual sales in excess of \$50 billion; it sustains over one million direct and indirect jobs, and supports over 300 rural communities across the country.

Canadian forest products firms operate in a highly competitive, global market. Fifty percent of the industry's output is exported to the United States. Transportation costs are a significant component of the delivered price of our products. The impact of transportation policies is of paramount concern to our members and accordingly, CPPA welcomes the opportunity to respond to the Board's request for comments in this proceeding.

**BACKGROUND**

Our members are convinced that there is no substitute for actual railway competition manifested by a number of rail carriers vying for a healthy share of our transportation business. The resultant rates and service options are essential for survival in our global marketplace.

The experience of our members with CN and CP has convinced us of their selectivity as to when and under what circumstances competition will occur. A railway duopoly, as experienced in Canada, is in reality, a dual monopoly.

In Canada, a railway duopoly (dual monopoly) is not synonymous with railway competition. Through this dual monopoly, the railways are able to frustrate competitive alternatives by simply declining to compete with each other. We believe that a North American dual monopoly will have no incentive to operate differently than it has in Canada with the result that a shipper's access to the benefits of effective competition will be severely curtailed if not eliminated. It is not in the short term economic self interest of a dual railway monopoly to engage in competitive pricing or more favourable service arrangements when a shipper is physically captive to one railway.

## **PROMOTING AND ENHANCING COMPETITION**

CPPA recommends that the regulations governing proposals for major rail consolidations be amended to include a rebuttable presumption that a major rail consolidation will substantially reduce the transportation alternatives available to shippers. The onus will be on the applicant in a major rail consolidation filing to rebut this presumption.

We accordingly recommend that regulation 1180.1 be amended by deleting clause (a) and substituting the following:

**1180.1 (a) General. The Surface Transportation Board will presume that any major railroad consolidation will substantially reduce the transportation alternatives available to shippers. It will be incumbent on the applicant to rebut this presumption to the satisfaction of the Board, failing which the application will be denied. In determining whether the presumption has been rebutted, the Board will consider whether the applicant has demonstrated that the proposed consolidation will;**

- i) reduce excess capacity;**

- ii) **result in the controlling entity assuming full responsibility for carrying out the controlled carrier's common carrier obligations to provide reasonable service on reasonable terms;**
- iii) **not substantially reduce the transportation alternatives available to shippers; and**
- iv) **result in substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion.**

### **DEVELOPMENT OF A FULL RECORD**

CPPA urges the Board to consider any major consolidation in its totality and where applicable require the production of all required filings including supporting information, market analyses, operational data and financial information relating to foreign railroad operations as well as operations in the USA . Without such data, the full effects of the proposed transaction cannot be adequately determined.

The development of a full record for a major transaction is particularly significant at this time in view of the likely impact the BNSF/CN proposed consolidation will have on further consolidation of the North American railroad industry. Shippers need a full record to make meaningful assessments regarding railroad choices which will be available to them. Our members consider effective railway competition to be essential in controlling the freight rates that they pay and to protect and enhance their service levels.

CPPA accordingly submits that a rule be established requiring that a full record encompassing foreign as well as US rail operations be filed in any consolidation application which is a major transaction.

Accordingly, regulation 1180.4(b) should be amended to include a new subsection as follows:

**1180.4(b)(2)(vi) All applications relating to railroad consolidations which constitute a major transaction shall include full particulars of foreign railroad operations in all materials filed pursuant to Rules 1180.4 (Procedures), 1180.6 (Supporting Information), 1180.7 (Market Analyses), 1180.8 (Operational Data), and 1180.9 (Financial Information).**

## **COORDINATION AND EXCHANGE OF DATA**

CPPA requests that a procedure be established with Canadian and Mexican authorities which will allow the Board to coordinate and exchange the data it receives when considering the likely impacts and consequences of a major rail consolidation.

For example, CPPA has been informed that a full investigation of the proposed BNSF/CN consolidation is to be conducted by the Commissioner of Competition in Canada pursuant to the relevant provisions of the Canada *Competition Act*.

The exchange of data between foreign authorities and the Board will prove helpful in enabling the Board to more fully and appropriately consider the impact of a proposed major railroad transaction in its entirety.

CPPA accordingly recommends that regulation 1180.1 be amended by adding clause (i) as follows:

**1180.1 (i): Coordination and Exchange of Data. The board recognizes that a major rail consolidation may involve a foreign railroad. In that event, the board intends to request a full exchange of data with authorities in the applicable foreign jurisdiction. This exchange of data will enable the board to more fully and appropriately appreciate the impact and consequences of the major railroad consolidation. All information obtained through this process will become part of the public record.**

### **ELIMINATION OF "ONE CASE AT A TIME" RULE - REGULATION 1180.1(g)**

CPPA endorses and supports the proposal of the Board to eliminate the "One Case at a Time" regulation at 49 CFR 1180.1 (g). Having regard to the prospect of significant further consolidation in the railroad industry, it is essential that the Board examine in all major consolidation proceedings the likely downstream effects of a proposed transaction, including the likely strategic response to that transaction by non-applicant railroads. This will require the amendment of regulation 1180.1 (g) by deleting the proviso that "the proper forum for consideration of the cumulative impacts and crossover effects is in a later proceeding".

### **REGULATIONS PROMOTING COMPETITION**

The predominant concern of CPPA is for a competitive North American railroad system which provides adequate service at reasonable rates. Major rail consolidations in recent years have resulted in significant service disruptions with attendant loss and inconvenience to the North American shipping public. Accordingly, our members consider it essential that an applicant for a major rail consolidation be required to submit detailed service, integration and implementation plans. Should there be a degradation of service levels, the Board should be authorized to assess appropriate penalties and issue remedial orders on a summary basis.

The Board should be concerned with enhancing railroad competition rather than preserving the status quo. As a condition to the approval to any major railroad transaction, the Board should exercise its powers to provide shippers with access to an additional carrier through trackage rights, switching at a prescribed fee, and maintenance of open gateways for all major routings. In addition, the Board should require that contracts be offered for the competitive portion of a joint line route (when a joint line partner has a bottleneck segment) and that new routes be established at reasonable interchange points when a merger applicant controls a bottleneck segment and the shipper has entered into a contract with another carrier for a competitive segment.


Specifically, the Board should abolish the "one lump" theory to rail mergers and should ensure that any shipper currently served by one class 1 railroad will be given access to another railroad should a major rail consolidation be approved.

## CONCLUSION

CPPA believes that the implementation of its recommendations will ensure that all applications for major rail consolidation will be considered having regard to the primary objective of promoting a competitive railroad environment in North America.

All of which is respectfully submitted this 15<sup>th</sup> day of May, 2000.

CANADIAN PULP AND PAPER ASSOCIATION

PER: 

DAVID W. CHURCH

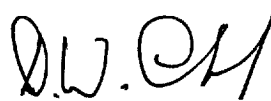


# CERTIFICATE OF SERVICE

I hereby certify on this 15<sup>th</sup> day of May, 2000 that I served copies of the foregoing submission on all parties of record by first class mail, postage pre-paid, in accordance with the Board's Decision of April 27<sup>th</sup>, 2000 (service date - late release April 28<sup>th</sup>, 2000).

CANADIAN PULP AND PAPER ASSOCIATION

Per:

A handwritten signature in black ink, appearing to read "D.W. Church". The signature is written in a cursive, somewhat stylized font.

DAVID W. CHURCH